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REPORT
100-258

SETTLING SEMINOLE INDIAN LAND CLAIMS WITHIN THE STATE OF FLORIDA, AND FOR OTHER PURPOSES

DECEMBER 15, 1987.—Ordered to be printed

Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1684]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1684) to settle Seminole Indian land claims within the State of Florida, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is an amendment in the nature of a substitute.

PURPOSE

S. 1684 was introduced in the Senate on September 15, 1987, by Senator Graham, for himself and Senator Chiles. This legislation will settle a dispute arising out of a state grant of a water flowage easement over lands in the East Big Cypress State Reservation of the Seminole Tribe of Florida. Subsequent to the granting of the easement, the Tribe lost use of much of the land and, in 1978, sued the State of Florida and the South Florida Water Management District. Negotiations began in 1985 to settle the suit and the settlement agreed to by the parties is incorporated in the bill, S. 1684. The approval of Congress is required because certain tribal lands will be transferred by the State to the Federal government to be held in trust and because other tribal lands will be sold to the State of Florida for Everglades restoration purposes. In addition, aboriginal claims to lands in the State of Florida (or claims stemming from an 1839 Executive Order) are extinguished, and the water rights of the State and the Tribe and their respective regulatory authorities are explicitly defined and established.

19-010

S413-12

The Settlement Agreement and the Water Compact with attached exhibits were offered into the record at the hearing on S. 1684 held by the Committee on November 5, 1987. The Agreement, Compact, and exhibits are a part of the Committee record and are incorporated by reference as a part of this Committee report.

BACKGROUND

There are three federal reservations and one state reservation in the State of Florida where land is held in trust for the Seminole Tribe. The three federal reservations are Brighton, Hollywood and West Big Cypress. The dispute in question arose on the state reservation, East Big Cypress, which adjoins the federal West Big Cypress reservation. The Trustees of the Internal Improvement Trust Fund (TIITF), a state entity responsible for management and development of State lands, as well as for the preservation of the East Big Cypress Reservation lands for the benefit and use of the Seminole Tribe, issued a water flowage easement over lands in that reservation to the South Florida Water Management District. Issued in 1950, the easement did not affect use of the lands until waterworks were in place and flooding occurred in the 1960s. Efforts to settle the dispute were not successful and in 1978 the Tribe filed suit. Negotiations began again in 1985 and the settlement encompassed in S. 1684 addresses all the major issues and will dispose of all the pending litigation.

There are several aspects to the settlement, which involves both land and water claims. Under the bill, the Tribe will transfer 14,470 acres of land to the State of Florida. This land will continue to be used by the South Florida Water District for water flowage and storage, as part of a flood control project in Central and South Florida, a project essential to the agriculture of Central and South Florida, as well as to the cities of Miami, Hollywood and Fort Lauderdale.

There is a small part of the East Big Cypress Reservation which is located in Palm Beach County, Florida, and which is not subject to the flowage easement. The Tribe has agreed to sell the land to the State, at a price representing the present fair market value of the land. The State will use this land for the Rosenberger Tract Everglades restoration program, and agrees, as part of the settlement, that the land will be perpetually maintained in its natural state.

Under the bill, the Tribe agrees to waive its unasserted claim to an 1839 Executive Order reservation and to any other Florida land claims arising from unextinguished aboriginal title. There is one exception to this waiver and that is a highway right-of-way claim that is still outstanding.

The State will pay the Tribe approximately $7 million, which includes $500,000 of in-kind technical assistance from the South Florida Water Management District for waste development on the West Big Cypress and/or Brighton Reservation which will be provided to the Tribe.

The part of the East Big Cypress State Reservation not transferred to the South Florida Water District or sold to the State for the Everglades project will be transferred by the State to the Fed-

eral government to be held in trust for the Seminole Tribe. Any rights of the water district to easements over these lands will be relinquished and the lands will become part of the larger West Big Cypress Reservation. The land transfer will be subject to restrictions against bingo operations and tax exempt cigarette sales; state liquor laws will apply on the lands.

A separate water rights compact is incorporated into the bill which settles several outstanding issues that might otherwise mean years of litigation. Under the compact, the Tribe will regulate its own water use through a newly created tribal water office. Although the Tribe must follow essential aspects of Florida's ground water management plans and Federal environmental laws, the Tribe will not need permits nor be subject to district processes. The Tribe will receive an immediate preference for development of its ground water, and, in the future, the highest priority permissible under Florida law. The Seminole water rights defined in the compact will be perpetual and not subject to renewal by the State.

In sum, the bill is comprehensive in settling both existing and potential claims of the Seminole Tribe to land and water in Central and South Florida and does not require any cash outlays on the part of the Federal government.

LEGISLATIVE HISTORY

S. 1684 was introduced on September 15, 1987, by Senators Graham and Chiles and referred to the Select Committee on Indian Affairs. A hearing was held by the Select Committee on November 5, 1987. A companion bill, H.R. 3290, introduced on September 16, 1987, by Representative Lewis of Florida, was referred to the House Committee on Interior and Insular Affairs, and a hearing was held by that Committee on October 15, 1987. The Committee on Interior and Insular Affairs on November 18, 1987, marked-up H.R. 3290 and ordered the bill reported with an amendment. The Select Committee on Indian Affairs marked-up S. 1684 on November 19, 1987, and ordered the bill reported with an amendment.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on November 19, 1987, by a unanimous vote of a quorum present, adopted an amendment in the nature of a substitute and ordered the bill reported with a recommendation that the Senate pass S. 1684 as amended.

SECTION-BY-SECTION ANALYSIS

In general, the bill follows the form of the Florida Indian Land Claims Settlement Act, approved by Congress in 1982, which settled Miccosukee land claims in Florida.

Sec. 1. This section provides that the Act may be cited as the "Seminole Indian Land Claims Settlement Act of 1987."

Sec. 2. This section recites findings and declarations by Congress which explain the need for the legislation and the congressional purpose in enacting it. Specifically, the legislation will settle the 1978 lawsuit entitled *Seminole Tribe of Indians of Florida* v. *State of Florida, et al.*, involving a Seminole claim to certain lands

within Florida. The pending suit challenged the District's right to a flowage easement granted by the State in 1950 over lands reserved to the Tribe under State law, without the consent of the Tribe or the United States and without compensation to the Tribe. The District uses the easement for a water flowage and storage area, part of a federally authorized flood control project in central or southern Florida. This area is essential for the provision and regulation of the water supply of residents of south Florida coastal cities, including Miami, Hollywood and Fort Lauderdale, and of large agricultural areas.

The Tribe also has unresolved claims to other Florida areas, based on an 1839 Presidential Executive Order, and on tribal aboriginal possession rights. The Tribe has asserted—but not filed suit on—these additional claims. The pending lawsuit and unresolved claims could cloud many land titles in Florida, even to land not involved in the present lawsuit, resulting in economic hardship for present landowners.

The Settlement Agreement, which all parties have signed, resolves any remaining unfiled Seminole land claims against the State and South Florida Water Management District, and settles the pending lawsuit. It provides for both money payments and conveyance of land in trust for the Tribe to the United States, and requires implementing legislation by both Congress and the Florida legislature. Congress shares the desire of the parties to settle the lawsuit and other Seminole land claims without imposing new cost burdens on the United States.

The water rights claimed by the Tribe are disputed, and amicable settlement is desirable. The Tribe and District have reached agreement—detailed in the Compact—which when Congress approves it, will substitute precisely defined water rights for the Tribe's undefined and disputed water rights claims.

Sec. 3. This section defines various terms for the purposes of this legislation. Specifically, clauses (1) through (4) provide identifying definitions for the Seminole Tribe, State of Florida and South Florida Water Management District—the three parties to the Settlement Agreement—and for the Secretary of the Interior. Clause (5) defines the phrase "lands or natural resources" all inclusively, specifying interests or rights to minerals, timber, water, hunting and fishing. Clause (6) defines "Settlement Agreement" as the negotiated agreement between the parties. It establishes the parties' intent to settle a pending lawsuit and extinguish other pending or potential claims of the Tribe to lands or natural resources in Florida. It notes that the agreement provides for the State and District buy certain real property interests from the Tribe. Clause (7) defines "settlement funds" as those the State and District will pay to the Tribe for those interests under the agreement. Clause (8) defines "Compact" as the Water Compact incorporated into the Settlement Agreement. The Compact defines precisely Seminole water rights and how they may be used within the Water District.

Sec. 4. This section requires the Secretary to make findings that the State and District have paid the settlement funds to the Tribe, and waived certain claims against the Tribe (required by Section 5c of the Settlement Agreement), and that the State has enacted the required implementing legislation. It prevents Section 5 from

taking effect until 180 days after enactment, or after the Secretary has made the required findings, whichever occurs last.

Sec. 5. Subsection 5(a) requires the Secretary—after making the required findings—to publish them in the Federal Register with the Settlement Agreement. On this publication, the tribe's commitments become effective. The land and resource transfers made by the Tribe are deemed constitutional and in conformity with applicable federal law, including the Trade and Intercourse Act of 1790. Congress specifically approves the Indian land and resource transfers in the Settlement Agreement, including the Compact and related exhibits.

Under Subsection (b), Paragraph (1), all Seminole tribal aboriginal title claims in Florida are extinguished, unless specified as an excepted interest in Paragraph 4a of the Settlement Agreement. All prior land or resource transfers by the Tribe to the State or federal government pursuant to statute or treaty are validated. Under Paragraph (2), any Seminole tribal land and resource claims arising after the transfers validated by Paragraph 1 which depend on retention of interest in rights to the land or resources transferred are extinguished. Specifically extinguished are damage claims for trespass or use and occupancy. The United States is exonerated from any liability for any claim or cause of action arising from the approval of the Settlement Agreement and Compact or exhibits attached thereto which are the subject of this legislation. Paragraph (3) leaves unaffected any individual Indian claims not derived from or through the Seminole or some other Indian tribe.

The Committee notes that this legislation and, in particular, the waivers and extinguishment of certain land claims and rights, is intended to apply only to the interests of the Seminole Tribe of Indians of Florida, as such Tribe is defined in this legislation, and to the Tribe's predecessors and successors in interest. In addition, the Committee is aware of a number of Indians describing themselves as the independent traditional Seminoles or the Seminole Nation of Florida. These Indians contend that they are not a part of, nor a predecessor in interest to, nor politically affiliated with, the Seminole Tribe of Indians of Florida, as defined in the legislation. These Indians were not a party to the negotiations which resulted in this legislation, and contend that they are not, therefore, bound by its provisions. The Committee, without passing on the merits of these contentions, does not intend that this legislation affect the legal claims or rights, if any, of these Indians, either individually or as a group. Nonetheless, this legislation confirms that the beneficial interest in the East Big Cypress State Seminole Reservation is vested solely in the Seminole Tribe of Indians of Florida and approves the conveyances of parts thereof to the State of Florida and to the South Florida Water Management District.

Paragraph (4) sets out the exclusive procedure under which an individual Indian or non-Seminole tribe, claiming a loss of property by extinguishment of a claim or validation of a transfer under Section 5, may seek relief. The claimant must, within one year of the Secretary's publication of findings, bring suit against the State and the United States in the U.S. District Court for the Southern District of Florida. This provision is relevant only to interests or claims that are derived from or through the Seminole Tribe.

Subsection (c) provides that neither the provisions of subsection (a) of this section, nor the provisions of section 7 of the Act: (1) enacts present or future laws of the State as Federal law; (2) grants consent to any future changes in the Settlement Agreement or Compact that could impose any obligation or liability on the United States; or (3) commits the United States to finance any project or activity not otherwise authorized by Federal law.

Sec. 6. Subsection 6(a) authorizes and directs the Secretary to take immediately into trust—regardless of clouds on title—approximately 15 sections of land in the northwest corner of Broward County, Florida, presently part of the East Big Cypress (State) Reservation. The land will be held as a federal reservation for the use and benefit of the Seminole Tribe.

Subsection 6(b) requires the Secretary within three years of enactment to conduct a cadastral survey of those portions of the Seminole reservations in Florida which have not previously been surveyed by the Department—including the 15 sections described in subsection 6(a)—and publish correct legal descriptions in the Federal Register within 180 days after completing the survey.

Subsection 6(c) authorizes and directs the Secretary—if the parties subsequently agree that additional lands exchanged with, or acquired by, the Tribe under Paragraph 6 of the settlement agreement should be held in federal trust as a reservation for the Tribe—to accept such lands under the agreed terms and conditions. This directive to the Secretary is limited to an amount of land which does not exceed the amount of land transferred to the State and Water District by the Tribe under the Settlement Agreement. In addition, the Secretary may refuse to take such lands into trust if he determines, in writing, that either the size, location, or condition of the land, or the terms and conditions under which it is transferred would place an unreasonable burden on the United States as trustee; the land is not situated in the State of Florida; or the land is not agricultural in nature. The provisions of this subsection are deemed necessary to assure some discretionary authority in the Secretary to reject lands which might be offered for transfer into trust. Nothing in this section is intended to limit the authority of the Secretary to acquire lands or take lands into trust for the tribe in the future under any other statute or law.

Subsection 6(d) provides that the jurisdiction assumed by the State of Florida under Section 285.16, Florida Statutes, enacted pursuant to P.L. 83-280, shall apply to the newly acquired lands. In addition, Florida laws on alcoholic beverages, gambling, and sale of cigarettes will be enforceable within the transferred lands.

The legislation leaves unchanged applicable federal restrictions on alienation, encumbrance and taxation of Indian trust property; leaves unaffected any hunting, fishing or trapping rights, privileges or immunities the Tribe or its members now enjoy; and grants no new civil jurisdiction to the State over Indian property. The transfer conveys no new water rights to the Tribe, except as defined in the Compact.

Sec. 7. This section provides that the Water Compact shall have the force and effect of federal law. Section 5(c) provides that this section does not enact present or future laws of the State as Federal law. Paragraph A(2) of the General Provisions of the Water

Compact provides that those State laws and District rules, orders, and regulations which are applicable to the Tribe under the terms of the Compact as specified hereafter are expressly incorporated into Federal law, and apply to the Tribe as Federal law.

It is the intent of section 7 that the Water Compact shall have the force and effect of Federal law only for the purpose of enforcement of the rights and obligations of the Seminole Tribe. The agreement by the Seminole Tribe in the Compact to follow some provisions of Florida water law and the agreement of State authorities to recognize special tribal water rights and authorities is thus given effect by this section as Federal law. State law itself is not directly applicable to the tribal water rights but is only applicable as a contractual matter and as provided through incorporation in the Compact.

Sec. 8. Subsection (a) bars any action to contest the constitutionality of this legislation, unless filed within 180 days of enactment in the U.S. District Court for the Southern District of Florida.

Subsection (b) provides the same Federal court with exclusive jurisdiction over any controversy arising under the Settlement Agreement, Compact, or private agreement between the Tribe and any third party, notwithstanding any immunity from suit enjoyed by any of the parties, but the Court has no jurisdiction to award money damages against any of the parties to the settlement agreement. Expedited court proceedings are mandatory within sound judicial discretion.

Sec. 9. This section provides that if part or all of the Settlement Agreement is ever invalidated, affecting any of the commitments made by the state or District, the Agreement shall no longer be of any force and effect, and the State, the district and the Tribe and its members will be released of their commitments as the Act was never enacted, and the approvals of transfers and extinguishment of claims and aboriginal title will be void retroactively.

Sec. 10. This section provides that the Act becomes effective upon enactment.

COST AND BUDGETARY CONSIDERATION

The cost estimate for S. 1684, as amended, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 20, 1987.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Hart Senate Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1684, the Seminole Land Claims Settlement Act, as ordered reported by the Senate Select Committee on Indian Affairs, November 19, 1987.

CBO estimates that enacting S. 1684 would probably result in a net savings to the federal government by averting the need for future litigation. The bill would approve and implement a negotiated settlement of land and water rights disputes between the State of Florida, the South Florida Water Management District, and the

Seminole Tribe of Florida. The bill would require the Secretary of the Interior to serve as trustee for certain lands currently managed by the state and to conduct a cadastral survey of Seminole lands in the state. Based on information provided by the Bureau of Indian Affairs, CBO expects that these activities would cost about $300,000.

On the other hand, the federal government would incur costs if this bill were not enacted because litigation regarding these issues is currently pending and would continue in the absence of the settlement embodied in S. 1684. Because of the water rights involved, the federal government would be a party to any litigation, and would incur costs associated with the proceedings. Therefore, enacting this bill would result in a savings for the federal government by avoiding the costs of future litigation. CBO expects that the costs of this litigation would exceed the costs of the bill.

This bill would require the South Florida Water Management District to purchase certain lands from the Seminoles for roughly $7.5 million. The State of Florida has provided a portion of the funds for this purchase, and the full amount is in escrow awaiting enactment of this legislation. In the absence of this legislation, the state would be involved in whatever litigation followed, and would incur costs associated with those proceedings and the resulting settlement.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

JAMES BLUM
(For Edward M. Gramlich, Acting Director).

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and peperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1684, as amended, will have a negligible regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The Committee received the following letter dated December 11, 1987, and testimony dated November 5, 1987, from the United States Department of the Interior giving the Administration's views on S. 1684:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, December 11, 1987.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: We have been asked to comment on language proposed for the Committee reports on S. 1684 and H.R. 3290, companion bills "To settle Seminole Indian land claims within the State of Florida, and for other purposes."

The proposed report language is as follows: "The Committee notes that this legislation and, in particular, the waivers and extinguishment of certain land claims and rights, is intended to apply only to the interests of the Seminole Tribe of Indians of Florida, as such Tribe is defined in this legislation, and to the Tribe's predecessors and successors in interest. In addition, the Committee is aware of a group of Indians known as the Seminole Nation of Florida or as the independent traditional Seminoles. This group contends that it is not a part of, nor a predecessor in interest to, nor politically or legally affiliated with, the Seminole Tribe of Indians of Florida, as defined in the legislation. This group was not a party to the negotiations which resulted in this legislation, and the members of this group contend that they are not, therefore, bound by its provisions. The Committee, without passing on the merits of these contentions, does not intend that this legislation affect the legal claims or rights of this group, if any."

We agree that, in approving the agreement between the State of Florida and the Seminole Tribe of Indians of Florida, the Congress should not impair the rights of others to land claims. Therefore, report language such as that above would help clarify the intent of the bill. In addition, an amendment to the disclaimer provision in the bill would provide even better clarification so that a resort to legislative history would not be necessary.

We note that the Florida Indian Land Claims Settlement Act of 1982 (96 Stat. 2012; 25 U.S.C. 1741 et seq.) approved a settlement agreement between the State of Florida and the Miccosukee Tribe of Indians of Florida and that legislation is similar to S. 1684 and H.R. 3290. Report language such as that above was included in the legislative history of that Act similar to that above to protect the interests of the unaffiliated traditional Seminoles.

Sincerely,

ROSS SWIMMER,
Assistant Secretary—Indian Affairs.

STATEMENT OF FRANK A. RYAN, DEPUTY TO THE ASSISTANT SECRETARY—INDIAN AFFAIRS (TRUST AND ECONOMIC DEVELOPMENT), DEPARTMENT OF THE INTERIOR

Good afternoon, Mr. Chairman and members of the Committee, I am pleased to present the views of the Department of the Interior on S. 1684, a bill "To settle Seminole Indian land claims within the State of Florida, and for other purposes."

We would support enactment of S. 1684, if amended as recommended in this statement and set out in its attachment.

S. 1684 provides for Federal approval and implementation of a land claims settlement agreement and a water compact entered into by the Seminole Tribe of Florida with the State of Florida and the South Florida Water Management District. The bill does not call for any payment of Federal funds or any disposal of Federal assets under the agreement or compact. It does provide for the Secretary of the Interior to assume the role of trustee for certain lands that the State has maintained as an Indian reservation and for those and other lands to be surveyed.

Analysis of S. 1684

Section 1 of S. 1684 provides the short title "Seminole Indian Land Claims Settlement Act of 1987".

Section 2 (Findings And Policy) includes a brief explanation of the need for enactment of the bill including that the bill provides for the settlement of the 1978 lawsuit entitled *Seminole Tribe of Indians of Florida* v. *State of Florida et al.* which involves certain lands in Florida. This section also states that the Water Compact between the Tribe and the South Florida Water Management District (Water District) which would be approved by enactment of the bill established specifically defined tribal water rights in lieu of those claimed by the Tribe. Paragraph 4 of this section should be deleted in connection with an amendment to section 5(b)(4) of the bill which we recommend later in this statement.

Section 3 provides definitions for the bill.

Section 4 provides that section 5 of the Act shall not take effect until the later of 180 days after the date of enactment of this Act or when the Secretary of the Interior finds that (1) the State and Water District have paid the settlement funds to the tribe; (2) the State has enacted appropriate legislation to carry out the commitments under the Settlement Agreement including the compact between the State, the district and the Tribe; and (3) the State and the district have given the waiver specified in paragraph (5)(c) of the Settlement Agreement.

Section 5(a)(1) provides that the Congress approves the Settlement Agreement, including the Compact.

Section 5(a)(2) provides that the Secretary shall publish the findings required by section 4 and the Settlement Agreement in the Federal Register. Upon that publication all transfers, waivers, releases, relinquishments, and other commitments made by the Tribe in the Settlement Agreement with the State and Water District will be in full force and effect. The land and resource transfers made by the Tribe shall be deemed in conformity with the U.S. Constitution and applicable Federal law including the Trade and Intercourse Act of 1790 and subsequent versions thereof codified in 25 U.S.C. 177.

Section 5(b)(1) provides that all Seminole tribal aboriginal title claims in Florida "are hereby extinguished" unless specified as an excepted interest in the Settlement Agreement. All prior land or natural resource transfers by the Tribe to the State or Federal Government pursuant to treaty or statute are validated.

Section 5(b)(2) provides that any Seminole tribal claims related to the land and resources involved in that extinguishment or validation but arising after the effective date (including claims for trespass damages or use and occupancy) are also extinguished. We are recommending an amendment to ensure that the approval of the Settlement Agreement and compact by the Congress does not create any claims by the tribe against the United States or others but preserving any tribal claims arising under the Agreement or compact.

Section 5(b)(3) provides that any individual Indian claims not derived from or through the Seminole or other Indian tribe shall not be affected by this Act. Thus, any rights of the unaffiliated Semi-

noles in Florida as individuals are preserved although any rights they may have through the tribe are extinguished.

Section 5(b)(4) imposes a statute of limitations on any claims by individual Indians or tribes other than the Seminole Tribe of Florida relating to the extinguishments and validations under section 5(b)(1) and (2). A claimant must within 180 days after publication of the Secretary's findings "bring action against the State and the United States". The only remedy afforded in any such action is "a proportionate share" of the $16 million Seminole award for which funds were appropriated in 1976.

The $16 million award is for the benefit of the Seminoles in Florida and in Oklahoma. Because of a dispute between the Seminole Tribe of Florida and the Seminole Nation of Oklahoma over the division of the award, the Congress has not enacted the legislation needed to divide the award and authorize the use of the funds. The investment income on the award had increased the total amount now available for use and distribution to over $40 million. Since the Seminole Nation of Oklahoma is not a party to the Settlement Agreement its interest in the award should not be used. Moreover, we do not believe that the award for a Seminole claim against the United States should be used as a pool to pay claims against the State or Federal Governments. We recommend deleting section 5(b)(4)(B).

Section 5 in providing for the extinguishments and validations refers to the Seminole Tribe of Florida "or any predecessor * * * in interest". This language would seem to include any interests the Seminole Nation of Oklahoma may have remaining in Florida from before the division of the Seminoles into the Florida and Oklahoma groups. Section 5(b)(4) would provide the Seminole Nation of Oklahoma a chance to bring any claims they believe they may have if they do so within the 180 days. Although it does not appear to us that there is any remaining basis for such a claim, we believe that the Congress should consider the views of the Seminole Nation of Oklahoma since they were not a party to the Settlement Agreement. In addition, we recommend that the bill be amended to change the 180 days to one year to provide a more reasonable period for any claims to be brought.

Section 6(a) directs the Secretary to accept from the State the transfer of approximately 15 sections of land to be held in trust and as a reservation for the use and benefit of the Seminole Tribe of Florida. The land (which has been a State Reservation for the Tribe) would continue to be subject to the criminal and civil jurisdiction of the State of Florida. The amendments attached to this statement provide for the deletion of this latter language at the end of section 6(a) because the subject is dealt with in greater detail in section 6(d).

Section 6(b) requires the Secretary to conduct a cadastral survey within two years of enactment of this Act of all Seminole Reservations in Florida including all lands taken into trust as reservations purusant to this Act. The Secretary is to publish the legal descriptions in the Federal Register within 180 days after the survey is completed. We understand that some of the land was surveyed by the Bureau of Land Management in 1975 and we do not believe that another survey of that land would be required. We are re-

questing an amendment to make it clear that unnecessary resurveys are not required.

In addition, we estimate that surveying the remainder of the lands would cost about $300,000 which could be accommodated by the diversion of funding from survey work on other Indian lands. However, if the Congress chooses to impose this priority on the Secretary, we are requesting an amendment to extend the period for the surveys to three years because the work can be accomplished more cost effectively over that period. The BIA anticipates there would be no additional resources required above the current budgeted level to provide services to the Tribe as the result of enactment of this settlement.

Section 6(c) *requires* the Secretary to take into trust for the Tribe any land acquired under a subsequent agreement with the State or Water District providing that the land may be taken in "Federal trust as a Reservation for the Tribe" and that the land would be held in trust "pursuant to the terms and conditions of the subsequent agreement." We are requesting an amendment to limit the amount of land required to be taken into trust to the amount of land that the tribe is transferring to the State under the Settlement Agreement because we understand that the purpose of the provision is to facilitate the restoration of the tribe's land base. In addition, the amendment would avoid the possibility of the imposition of an unreasonable burden on the United States such as, for example, would be the case in the transfer to the Secretary in trust of scattered tracts or land containing toxic waste materials. The amendment would also require that the land be in Florida and agricultural in nature.

Section 6(d) preserves the existing jurisdictional authority of the State over land transferred to the Secretary in trust for the tribe. We are requesting some technical and clarifying amendments to the subsection.

Section 7 provides that the Water Compact shall have the same force and effect as Federal Law. We are requesting an amendment to clarify that the provision is for purposes of the enforcement of the tribe's rights and obligations under the Compact.

Section 8 provides that any action to contest the constitutionality of this Act shall be barred unless the complaint is filed within 180 days after the date of enactment in the U.S. District Court for the Southern District of Florida. Section 8(b) provides the same Court with exclusive jurisdiction regarding any controversy arising under the Settlement Agreement, Compact, or private agreement between the Tribe and any third party under the Compact. However, the Court would have no jurisdiction to award money damages against the State, the Water District, or the Tribe.

Section 9 provides that if part or all of the Settlement Agreement is ever invalidated, the transfers, waivers, releases, or other commitments made by the State or the Water District and the Compact shall no longer be of any force or effect and the Tribe and its members shall be released of its commitments as if never enacted and the extinguishments and approvals under section 5 shall be void ab initio.

Background

The Seminole Tribe's land in Florida has been divided between State trusteeship and Federal trusteeship. Brighton, Hollywood and West Big Cypress are Federal reservations. The East Big Cypress is a state reservation which was established in 1935 in exchange for a reservation that had earlier been established in Monroe County (this reservation was initially set aside for the Seminole and Miccosukee Tribes, but was ultimately partitioned between the two Tribes, pursuant to Florida Statutes § 285.061).

We support the transfer of the State Reservation lands to Federal trust and reservation status. The state trustee is the Board of Trustees of the Internal Improvement Trust Fund (TIITF), the same body which is responsible for the development of state lands. The inherent conflict of interest in such an arrangement was illustrated in 1950 when the TIITF, charged by state law "to protect the Tribe's use and benefit of the Big Cypress lands forever," conveyed a flowage easement over these lands to the Central and Southern Flood Control District (now the South Florida Water Management District) without provision for any compensation to the Tribe. The Flood Control District eventually flooded the lands within the easement.

The Tribe filed suit in 1978, claiming, alternatively, an inverse condemnation, breach of trust under state law, and attempted alienation of its property interests in violation of Federal law. The case was actively litigated through the end of 1984. In early 1985, the parties began the settlement talks which eventually led to the agreement that enactment of S. 1684 would approve.

Conveyances and settlement of land claims

Enactment of S. 1684 to approve the Settlement Agreement would settle the Tribe's pending claims in *Seminole Tribe of Florida, et al.* (Case No. 78-6116-CIV-NCR), which involve the action of the State of Florida in granting a flowage easement over part of the Seminole State Reservation in 1950. All claims under Federal and State law against the State and the South Florida Water Management District arising from this transaction would be settled. Under the terms of the settlement, the Tribe would give up its ownership of 14,470 acres of land. These lands would be transferred to the State in fee.

The Tribe would also sell to the State the Tribe's interests in the six sections of the State Reservation Palm Beach County not subject to the flowage easement, which the State desires to acquire for the Rotenberger Tract Everglades restoration program. The Tribe would also waive any claim for the 5,000,000-acre reservation set up under an 1839 Executive Order (the Macomb claim), which has never been filed but which has been used in settlement negotiations. The Tribe would abandon any claim it had to continued aboriginal title, or any other claim against the State, except for one claim that had been reserved from the settlement arising from an unauthorized widening of Highway 441 across the Hollywood Reservation.

For these various land claims and transactions, the Tribe would receive approximately $7,500,000. Of this figure, $500,000 is to be

paid by the South Florida Water Management District in the form of in-kind services needed for water development on the West Big Cypress and/or Brighton Reservations. The Water Management District has promised and has in fact already provided assistance to the Tribe in obtaining matching Federal funds for this work. All lands of the East Big Cypress Reservation remaining in the Tribes beneficial ownership would, after the settlement, be transferred into Federal trust. The transfer into Federal trust would involve a release by the District of any rights it may have obtained under the flowage easement to three sections of land that are not needed for the operation of its project works. The transfer would be subject to the restriction that bingo operations and tax exempt cigarette sales could not be conducted on these specific lands. State liquor laws would also continue to fully apply to these lands.

We are advised that the settlement has been approved by the Seminole Tribal Council, the Florida legislature, the Florida Governor and Cabinet and the South Florida Water Management District's Governing Board.

Seminole Water Rights Compact

As an integral part of the settlement, a Water Rights Compact among the Seminole Tribe, the State of Florida and the South Florida Water Management District has already been approved by the Seminole Tribal Council, the District's Governing Board, the Florida Governor and Cabinet and the Florida Legislature.

Problems as to both water quality and water quantity have become critical in the State of Florida and the Bureau of Indian Affairs has been assisting the Seminole Tribe in recent years in the study of its water rights problems. In 1986, the Corps of Engineers, at the request of the Bureau of Indian Affairs, completed a study of problems at the Seminole Brighton Reservation where critical water shortages have been frequent in recent years. It seemed inevitable that large scale litigation involving the nature of the Seminole Tribal water rights and their relationship to the water law of the State of Florida would result.

Under the Compact, the Tribe may operate without obtaining permits from the District and without being subject to the processes of the District. In return, the Tribe agrees to follow essential aspects of Florida surface and ground water management and to seek advance approval from the District of its water development plans and consumptive water use.

Also, under the Compact, the Seminole Tribe is given an immediate preference for the development of its ground water and, in the future, is assured a priority of the highest nature actually afforded to persons or entities allowed under Florida law with respect to any water right. Seminole water rights will differ from the usual water rights afforded to Florida citizens. One important difference is that they would be perpetual in nature and would not be subject to renewal by State authorities.

The Water District guarantees the Tribe 15% of the available surface water in the Indian Prairie Basin (Brighton Area) and a comparable percentage on the Big Cypress Reservation. An investigation of the tribal water shortages in Brighton is required of the District and must be completed by December 31, 1987. A proposal

for curing tribal water shortages in that area is to be produced by the District no later than January 13, 1988.

We understand that it has long been believed that upstream diversions of surface water have contributed to water shortages on the Brighton Reservation. Deterioration of the internal water system at Brighton, recently studied by the Corps of Engineers, has also contributed to the problem.

The Water Rights Compact is unique and important for several reasons. To my knowledge, it is the first serious attempt to define Indian Tribal water rights in the Eastern United States. It is also unique because it illustrates the possibility of settling a significant Indian water rights issue without resorting to litigation. To our knowledge, this is the only Compact or agreement where such a settlement has been accomplished without years of litigation preceding the settlement. This is entirely consistent with the Administration's policy that the negotiated settlement of Indian water rights is the better course of action to pursue, rather than protracted litigation to resolve outstanding claims.

With respect to tribal jurisdiction for water management and its relationship to State of Florida water law, it is our understanding that the Tribe would have the jurisdiction to manage its water resources, but that it has agreed to a notice procedure. Upon tribal notice of a management action, if the State or South Florida Water Management District believe the management action is not consistent with the Compact, the Tribe may proceed with implementation, and the State and District would have the alternative of resolving the question of tribal jurisdiction in the Federal District Court.

The Water Compact states in part "Those State laws and rules, orders, and regulations which are applicable to the Tribe under the terms of the Compact as specified hereafter are expressly incorporated into federal law, and apply to the Tribe as federal law." This provision is of critical importance to the Tribe. The Tribe, in its sovereign status, would never subject itself to State law willingly. It is our understanding that there was a great deal of reluctance on the part of the many tribal members to the whole concept of harmonizing tribal operations with the State system, but the Tribe finally came to the view that it was better to do this and to formulate a cooperative arrangement with the State. Though the Tribe would have to follow many of the substantive provisions of State law, the Tribe's governmental status and special Federal protection would not be compromised.

One of the basic theories of the Compact is that the Tribe is protected because it is not subject to State administrative control. While the State has certain powers to affect the Tribe's activities through the processes agreed upon, the State cannot, on its own initiative, stop tribal action, if the Tribe chooses to proceed. If a dispute arises, for any reason, the recourse of the State or the Water District is to take the Tribe to Federal Court where the burden will be on the District or State agency, as the case may be, to show that the Tribe has violated its commitments under applicable provisions of the Compact.

It is critical that the Tribe be in the position to enforce the Compact rights as Federal rights against the State and the Water District. This can only be accomplished, if all the provisions of State

law, which are made applicable to the Tribe by the Compact, have the force of Federal law for purposes of enforcing the Tribe's rights and obligations. Also, by affording the terms of the Compact the status of Federal law for purposes of enforcing the Tribe's rights and obligations, the Tribe could bring an action in Federal Court to compel the State or the District to implement or enforce a State law.

The Seminole Compact would not set a precedent for the water rights claims or water-rights-related expectations of any other tribe. The only other federally recognized tribe in Florida is the Miccosukee Tribe. Under section 8(c) of Public Law 97-399, the creation of the Federal reservation for the Miccosukee Tribe, under the Florida Indian Land Claims Settlement Act of 1982, did not confer upon the Miccosukee Tribe any Federal water rights. Given the unique nature of water law in Florida—which is the only State in the East that has fully adopted a permit system of water resource management and has abolished private Riparian rights—the Compact, which harmonizes the rights of the Seminole Tribe with that system, would have no specific application elsewhere.

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.

AMENDMENTS PROPOSED BY THE DEPARTMENT OF THE INTERIOR TO S. 1684, THE "SEMINOLE INDIAN LAND CLAIMS SETTLEMENT ACT OF 1987"

1. In section 2, on page 2 delete lines 17 through 23 and renumber the remaining paragraphs accordingly.

2. In section 5(b)(2):

On page 8, line 9 delete "(2)" and insert in lieu thereof "(2)(A)"; and

On page 8 insert immediately before line 19 the following new subparagraph:

> "(B) The United States shall not be liable directly or indirectly for any claim or cause of action arising from the approval of this settlement agreement, compact, or exhibits attached thereto."

3. In section 5(b)(4):

On page 9, line 1 delete "(A)";

On page 9, line 7 delete "180 days" and insert in lieu thereof "one year"; and

On page 9 delete lines 14 through 20.

4. In section 5 on page 9, immediately before line 21 insert the following new subsection:

"(c) Neither subsection (a) of this section, nor section 7 of this Act (1) enacts present or future laws of the State as Federal law, (2) grants consent to any future changes in the Settlement Agreement or compact that could impose any obligation or liability on the United States, or (3) commits the United States to finance any project or activity not otherwise authorized by Federal law."

5. In section 6(a) on page 10, line 4, insert after the words "Range 35 east" the words ", as monumented by the General Land Office and depicted on plat of survey approved January 14, 1941".

In section 6(a) on page 10, delete lines 21 through 25.

6. In section 6(b) on page 11, on line 1, change "2-year" to "3-year", on line 3, after the words "survey of," add the words "those portions of", and on line 4, after "Florida", add the words "not previously surveyed by the Department of the Interior,".

7. In section 6(c) on page 11, line 17 insert before the period: "unless (1) the total amount of land previously taken in trust under this subsection exceeds the amount of land transferred to the State and district by the tribe under the Settlement Agreement, (2) the Secretary determines in writing that either the size, location, or condition of the land, or the terms and conditions would place an unreasonable burden on the United States as trustee, (3) the land is not in Florida, or (4) the land is not agricultural in nature".

8. In section 6(d)(1) on page 11, lines 18 and 19 delete "conveyance of any lands by the State to" and insert in lieu thereof "acquisition of any land under subsections (a) or (c) of this section by" and on lines 24 and 25 delete "State shall retrocede such civil or criminal jurisdiction in whole or part" and insert in lieu thereof "the United States accepts a retrocession by the State of such civil or criminal jurisdiction in whole or part under section 403 of the Act of April 11, 1968 (82 Stat. 79; 25 U.S.C. 1323)".

9. In section 7 on page 12, line 26 insert immediately before the period: "for purposes of enforcement of the rights and obligations of the tribe".

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate the Committee notes that S. 1684 does not effect any change in existing law.

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